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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,738	08/04/2003	Graham John Myatt	9151R	5595

27752 7590 11/30/2005

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EXAMINER

WHITE, EVERETT NMN

ART UNIT PAPER NUMBER

1623

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,738

Applicant(s)

MYATT ET AL.

Examiner

Everett White

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28-30 is/are allowed.
- 6) ☒ Claim(s) 1-27, 31 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Appeal Brief filed May 3, 2005 has been received, entered and carefully considered. The amendment affects the instant application accordingly:
 - (A) Comments regarding Office Action have been provided drawn to:
 - (I) Claims objection, which has been withdrawn;
 - (II) Obviousness-type Double Patenting rejection, which is maintained for the reasons of record.
2. Claims 1-32 are pending in the case.
3. The text of those sections of Title 35, U. S. Code not included in this action can be found in a prior Office action.

Appeal Status

4. The appeal is being held in abeyance.

Double Patenting

5. Claims 1-27, 31 and 32 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-21 and 24-44 of copending Application No. 10/633,965.
6. Applicant's arguments filed September 19, 2005 have been fully considered but they are not persuasive. Applicants indicated that once allowable subject matter has been identified, an appropriate terminal disclaimer will be submitted. A terminal disclaimer or some other appropriate response is needed in order to overcome the instant obviousness-type double patenting rejection.

Allowable Subject Matter

7. Claims 28-30 allowed.
8. The following is a statement of reasons for the indication of allowable subject matter: Upon consideration of the Appeal Brief filed May 3, 2005, it is agreed that ~~the~~ ^{claims}

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28-30 are
application is allowable for the reasons set forth on pages 4, 6 and 8, the 2nd paragraph of each page, of said Appeal Brief, that the prior art of record does not teach or suggest a polysaccharide comprising xylose and arabinose, where the ratio of the xylose to the arabinose is at least about 3:1, by weight, in combination with a dispersing component selected from the group consisting of binders, suspending agents, edible acids, and mixtures thereof as claimed in the present application.

Summary

9. Claims 28-30 are allowed; Claims 1-27, 31 and 32 are rejected.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner's Telephone Number, Fax Number, and Other Information

11. For 24 hour access to patent application information 7 days per week, or for filing applications, please visit our website at www.uspto.gov and click on the button "Patent Electronic Business Center" for more information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is (571) 272-0660. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reach on (571) 272-0661. The fax phone number for this Group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.



E. White


James O. Wilson
Supervisory Primary Examiner
Technology Center 1600